

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 8:08CR320</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>TENTATIVE FINDINGS</b>
	)	
<b>DONALD CLARK, JR.,</b>	)	
	)	
<b>Defendant.</b>	)	

The Court has received the Presentence Investigation Report ("PSR") and the parties' objections thereto (Filing Nos. 33, 34). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The parties object to the base offense level set out in ¶ 26 and the 2-level enhancement under U.S.S.G. § 2K2.1(b)(3)(B) in ¶ 27. The objections are granted.

**IT IS ORDERED:**

1. The Defendant's objections to the PSR (Filing No. 34) are granted;
2. The government's objections to the PSR (Filing No. 33) are granted;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's motion for downward departure (Filing No. 78) will be heard at sentencing.

DATED this 9<sup>th</sup> day of June, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge